

REMARKS

Summary of Changes Made

The application was filed with nine (9) claims, and claims numbering as high as 22 were later added. Claims 20-22 were withdrawn as directed to non-elected inventions. Presently new claims 23 and 24 are added. Claim 23 is a combination of the limitations of all of claims 10-14, while claim 24 combines the limitations of claims 15-19. This amendment is made with changes relative to Amendment C, inasmuch as Amendment D (After Final, 3 Nov 2010) was not entered into the record. Accordingly, claims 10-19, 23 and 24 (11 claims) remain pending in the application. No new matter is added hereby.

Claim Rejections- 35 U.S.C. 103(a) – (Brieva/Knipper/Picard)

Claims 10-14 are rejected under 35 U.S.C. 103(a) as being anticipated by Brieva, U.S. 5,066,485, (“Brieva”), in view of Knipper, U.S. 5,514,792, (“Knipper”), and Picard, U.S. 5,510,100, (“Picard”).

The Examiner’s contentions regarding Brieva are the same as in the previous Office Action. The Examiner admits that Brieva fails to explicitly teach succinoglycan or the amount of glycerol. Knipper is therefore cited for a teaching of a succinoglycan useful as a thickener or stabilizer in a cosmetic. The Examiner contends that Knipper teaches that succinoglycans exhibit rheological properties similar to those of xanthan gum.

Further, The Examiner contends that Picard teaches oil-in-water emulsions including 0.2% xanthan gum and 3% of humectants.

The Examiner concludes that the use of Knipper’s succinoglycan in an oil-in-water emulsion would have been obvious.

Contrary to the Examiner’s assertion, there is no motivation to combine the references as the Examiner has done. Indeed, when taken together as a whole, the skilled artisan is led in the opposite direction, and concludes that there is a teaching against combining the references.

As noted in Applicants’ Amendment C filed 31 March 2010, Applicants stated that a sufficient amount of thickener cannot be incorporated into the composition taught by Brieva because Brieva’s composition desirably does not settle. Thus, although Brieva suggests that it is possible for the composition to incorporate humectants (e.g. glycerol) and/or thickeners

(e.g. xanthane gum) as optional ingredients, the reference fails to suggest any amounts. The skilled artisan reading Brieva would thus have to experiment across the entire range of possibilities (0 to 100%) of humectants and/or thickeners. The mere disclosure of an ingredient does not teach any given range of amounts of such ingredient.

For the following argumentation the Examiner is referred to the Declaration of Susumu Yoshida, attached as Appendix A. Knipper teaches that succinoglycan may be used as a thickener in cosmetics. Brieva discloses a composition comprising 0.5% of xanthan gum as Example 4. Therefore, following the Examiner's reasoning, the skilled artisan should expect to use 0.5% of succinoglycan in place of xanthan gum as in Example 4.

Applicants point out that succinoglycan cannot be incorporated into the composition in an amount of 0.5% of Brieva's composition. The inventor herein asserts that the thickening behavior of xanthan gum and succinoglycan are quite different. Indeed, succinoglycan has a greater thickening effect than xanthan gum, while it easily undergoes "settling." Applicants note that 0.5% of xanthan gum is equivalent to 0.01% of succinoglycan in terms of levels of "settling," Declaration of Susumu Yoshida, paragraphs 5-7. Therefore, behaviors of two thickeners depending on the amount are as in the following table, taken from the Declaration.

Component	Settling or not	Thickening Property
(1) 0.5 % xanthan gum	Not settling	
(2) 0.01 % succinoglycan	Not settling	Insufficient
(3) 0.05 % succinoglycan	Settling	Sufficient
(4) 0.5 % succinoglycan	Settling	Sufficient

Each property of components (2) to (4) is clear from Table 7 of the specification.

Since Brieva intends to provide a composition without settling, only component (1) or (2) can be incorporated into the composition. As mentioned previously, 0.5% of xanthan gum (component 1)) is equivalent to 0.01% of succinoglycan (component 2)) so it is clear that Brieva uses thickener only in an amount that does not cause settling. Importantly, an amount of thickener that does not cause settling also does not exhibit sufficient thickening property. Therefore, the composition by Brieva may comprise thickeners at the amount with insufficient thickening property, and the said amount is less than 0.05% when thickener is succinoglycan.

Thus, the examiner's argument, wherein 0.5% succinoglycan would be applied to Brieva's composition in place of 0.5% xanthan gum, is not taught by the references when taken together. The skilled artisan concludes that such combination is not desirable.

Neither Brieva nor Knipper suggest that it is possible to solve the problem of "settling" by incorporating at least one plasticizer selected from the group consisting of glycerin (glycerol), polyxyethylene methyl glucoside and polyethylene glycol 20000. Thus, even if Brieva suggests the use of "glycerol" into the composition as thickener, it would not be possible to increase the amount of succinoglycan on this basis. So, the obtained composition from the combination of the references would not meet the amount of succinoglycan specified in the present invention.

Therefore, the skilled artisan does not obtain the presently claimed invention by combining the references, as there is no way to ensure sufficient thickening property while avoiding settling.

It is believed that the above arguments serve to overcome the obviousness rejection over Brieva, Knipper and Picard.

With respect to new claim 23, which includes all limitations of claims 10-14, it is believed that the above arguments show the undesirability of combining the references. Claim 23 is believed to be patentable over all cited references.

Claim Rejections- 35 U.S.C. 103(a) – (Brieva/Knipper/Picard/Muller/Magauran)

Claims 15-19 are rejected under 35 U.S.C. 103(a) as being anticipated by Brieva, in view of Knipper, Picard, Muller, U.S. 6,511,566 ("Muller"), and Magauran, U.S. 5,340,390, ("Magauran").

The Examiner admits that Brieva fails to disclose 12-hydroxystearic acid added polyglycerol. The Examiner contends that Muller provides this teaching. Magauran teaches that the solid particles have improved dispersibility as a result of the thickener taught by Muller.

In particular, at page 8 of the final office action, the examiner contends that Muller teaches glyceryl tri(12-hydroxystearate), a 12-hydroxystearic acid-added polyglycerol, as a wax ester thickener (15:7-15; 16:15-20). However, glyceryl tri(12-hydroxystearate) is different from condensed 12 hydroxystearic acid-added polyglycerol described in the specification (page 8, formula (V)). Thus, glyceryl tri(12-hydroxystearate) is glyceryl trioxystearate, i.e. it is a monoglyceride while, in the compound of the formula (V), "m is an

integer 2 to 50.” Formula (V) thus represents at least a diglyceride, but may also represent a tri-glyceride or polyglyceride. Further, the compound of formula (V) is used as a dispersant in the present invention, but Muller fails to teach this. Therefore, the Muller reference has no relation to the present invention and the prior art, when taken as a whole, fails to disclose or suggest the subject matter “wherein the oil phase contains at least one selected from the group consisting of condensed 12-hydroxystearic acid-added polyethylene glycol and condensed 12-hydroxystearic acid-added polyglycerol as a dispersant of the hydrophobized powder.”

Taken together with the reasoning set forth in the previous section, above, it is believed that claims 15-19 are patentable over the combination of five references.

With respect to new claim 24, which includes all limitations of claims 15-19, it is believed that the above arguments show the undesirability of combining the references. Claim 24 is believed to be patentable over all cited references.

CONCLUSION

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application. If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 18-0160, our Order No. IWI-16045.

Respectfully submitted,

RANKIN, HILL & CLARK LLP

/ Christopher J. Korff /
Christopher J. Korff
Reg. No. 55,342

23755 Lorain Road - Suite 200
North Olmsted, 44070-2224
(216) 566-9700
docketing@rankinhill.com